

COOK COUNTY SHERIFF'S MERIT BOARD

Sheriff of Cook County)
)
vs.)
) Docket No. 1812
Joel A. Mireles)
Correctional Officer)
Star # 9240)

DECISION

This matter coming on to be heard pursuant to notice before Brian Riordan (former Board Member), on February 4, 2016, and reassigned to Kim R. Widup, Board Member, the Cook County Sheriff's Merit Board finds as follows:

Jurisdiction

Joel Mireles, hereinafter "Respondent," was appointed a Correctional Officer on July 23, 2007. Respondent's position as a Correctional Officer involves duties and responsibilities to the public; and

Each member of the Cook County Sheriff's Merit Board, hereinafter "Board," has been duly appointed to serve as a member of the Board pursuant to confirmation by the Cook County Board of Commissioners, State of Illinois, to sit for a stated term; and

The Board has jurisdiction of the subject matter of the parties in accordance with Chapter 55 of the Illinois Compiled Statutes; and

The Respondent was personally served with a copy of the Complaint and notice of hearing and appeared before the Board with counsel to contest the charges contained in the Complaint; and

The Board has heard the evidence presented by the Sheriff and the Respondent and has evaluated the credibility of the witnesses and supporting evidence. After considering the evidence, the Board finds as follows:

Background

On July 23, 2007, the Respondent was appointed a Correctional Officer and on December 23, 2009, was assigned to the Receiving and Classification Center (RCDC) of the Cook County Department of Corrections (CCDOC), located at 2700 S. California Boulevard, Chicago, IL. On August 25, 2013, the Respondent was assigned to Division XI of the CCDOC, 3015 S. California Boulevard, Chicago.

On May 4, 2012, while on duty in RCDC, the Respondent used excessive force against detainee [REDACTED] (detainee [REDACTED] by striking detainee [REDACTED] in the head and by pushing detainee [REDACTED] who was at this time handcuffed, into a doorway and into a wall without justification. These actions by the Respondent caused injury to detainee [REDACTED]

specifically, right hand and knee abrasions, left upper back abrasions, a left orbit contusion, and a right thumb contusion.

On May 4, 2012, Respondent completed a Use of Force Report, an Incident Report and an Inmate Disciplinary Report. In the narrative of all three reports, Respondent failed to document that he struck detainee [REDACTED] in the head or that he pushed detainee [REDACTED] who was at this time handcuffed, into a doorway and into a wall without justification. In addition, in the narrative of all three reports, Respondent falsely documented that detainee [REDACTED] raised his hands before Respondent struck him in the head.

A videotape recording from a stationary camera in RCDC of May 4, 2012, shows detainee [REDACTED] walk out of the bathroom and walk past two correctional officers. The videotape recording then shows Respondent stopping detainee [REDACTED] and immediately striking detainee [REDACTED] in the head. The videotape recording shows Respondent grabbing detainee [REDACTED] head and attempting to pull detainee [REDACTED] down. The videotape recording shows several correctional officers taking detainee [REDACTED] to the ground. The videotape recording shows Correctional Officer (CO) [REDACTED] using his leg to hold detainee [REDACTED] down and kicking detainee [REDACTED] several times while detainee [REDACTED] is on the ground. The videotape recording shows Correctional Sergeant (Sgt) [REDACTED] standing next to CO [REDACTED] while CO [REDACTED] is kicking detainee [REDACTED]. The videotape recording shows Respondent escorting detainee [REDACTED] who was at this time handcuffed, and pushing detainee [REDACTED] into a doorway and into a wall. The videotape recording shows Sgt [REDACTED] following close behind Respondent as detainee [REDACTED] is being escorted and excessive force is used.

On January 31, 2014, Respondent was interviewed by an investigator from the Cook County Sheriff's (CCSO) Office of Professional Review (OPR). Respondent falsely reported that no force was used on detainee [REDACTED] after detainee [REDACTED] was handcuffed. Respondent denied punching detainee [REDACTED] and stated that he only used open hand strikes. Respondent stated that he did not see any officers kick detainee [REDACTED].

On March 24, 2014, Respondent was interviewed and provided a signed statement to investigators from the OPR. Respondent falsely reported that he observed detainee [REDACTED] raising his hand up which caused Respondent to be in fear of getting hit. On March 24, 2014, after Respondent was shown the videotape recording of the incident on May 4, 2012, Respondent falsely reported to investigators from the OPR that he did not push detainee [REDACTED] into a doorway or into the wall.

By complaint dated March 13, 2015, upon a finding of guilt, the Petitioner sought the removal of the Respondent from the Cook County Sheriff's Department.

Issues Presented

The Respondent was charged based on his actions detailed above with violations of the Rules and Regulations and General Orders of the Cook County Department of Corrections, specifically:

Sheriff's Order 11.2.1.0 - Response to Resistance/Use of Force Policy, in its entirety, including but not limited to, the following subparts:

II. POLICY

Officers shall use an amount of force reasonable and necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect the officer(s) or others from injury, as specified by federal/Illinois statutes and case law.

The CCSO utilizes the Use of Force Model (2010) – John C. Desmedt and Protective Safety Systems Incorporated to provide guidance on the appropriate amount of force to be used to effect a lawful purpose and to articulate a detailed report on the officer's actions. The Use of Force model employs the progressive and reasonable escalation and de-escalation of officer applied force in proportional response to the actions and level of resistance offered by a subject.

Every use of force greater than social control, officer presence or verbal control must be reported as outlined in this directive. Officers shall not unreasonably endanger themselves or another person to conform to the restrictions of this directive.

V. DEFINITIONS

- E. Excessive force – The application of an unreasonable amount of force in a given incident based on the totality of the circumstances.

VII. GUIDELINES

- A. The primary objective of the use of force is to ensure control of a subject with only the amount of reasonable force necessary based on the totality of circumstances and to gain compliance of the subject as safely and quickly as possible.
- B. Officers are authorized to use only the amount of force necessary to effect lawful objectives. The determination of what is or is not reasonable force is based on each individual situation and is a decision that the involved officer must make based on the totality of the circumstances.
- C. Except under exigent circumstances, officers must identify themselves and give verbal warnings to any subject prior to using any force. Officers, whenever possible, shall exercise advice, persuasion, verbal commands and warnings prior to the consideration of force. This may include the utilization of any previous crisis intervention training the officer may possess or the presence of a mental health provider if possible. When possible, verbal commands are to be used in conjunction with the officer's actions.
- E. When force is applied; officers shall escalate or de-escalate their use of force based on the subject's resistance.

X. PROHIBITED/RESTRICTED ACTS

The use of excessive force is prohibited. Officers using excessive force, unwarranted physical force, or verbal abuse shall be subject to disciplinary action up to and including termination of employment.

A. The following acts are prohibited:

4. use of force as a response to verbal insults or subject threats where there is no immediate threat to safety of the institution, subjects, or staff;
6. striking, hitting, or punching a restrained or handcuffed and non-combative subject; and
7. use of force against a subject after the subject has ceased to offer resistance and is under control.

XIII. APPLICABILITY

- A. By order of the Sheriff of Cook County, this Sheriff's Order applies to all CCSO officers and must be strictly observed.
- B. Any conflicts with previous orders, policies or procedures shall be resolved in favor of this order.
- C. All CCSO officers are required to familiarize themselves with the contents of this order and to adhere to the policy established herein.

General Order 4.1 - Internal Investigations, in its entirety, including but not limited to, the following subparts:

III. REQUIREMENTS

Misconduct which impairs an employee's ability to perform his/her assigned responsibilities, or adversely affects or involves the Cook County Department of Corrections and/or the Office of the Sheriff of Cook County may be cause for disciplinary action.

Serious misconduct would include those violations of the law which constitutes a misdemeanor of a felony, or alleged/suspected, violations of Cook County Department of Corrections rules and orders which pose a threat to the safety of staff or inmates or the security of the institution. Included also is misconduct committed while an employee is off duty/outside the institution where in the official character and status of the employee as a correctional officer, deputy sheriff, law enforcement officer, or civilian correctional employee becomes identifiable and calls into question the reputation of the County of Cook, the Office of the Sheriff, or the Department of Corrections.

A. Guidelines for Serious Misconduct include, but are not limited to:

17. Engage in any conduct unbecoming an employee of the Cook County Department of Corrections which tends to reflect discredit on the Department of Corrections or Sheriff's Office.
18. Making a false official report, either oral or written.

General Order 3.8 - Ethics and Standards of Conduct, in its entirety, including but not limited to, the following subparts:

I. POLICY

It is the policy of the Cook County Department of Corrections (CCDOC) that employees will conduct themselves in a professional and ethical manner, both on and off duty. Employees will not engage in activities unbecoming of county employees, or conduct that reflects unfavorably to the Office of the Sheriff of Cook County.

III. REQUIREMENTS

The CCDOC Code of Ethics requires the highest level of conduct from all employees. It is the expectation that sworn and civilian employees conduct themselves with high standards of professional conduct and behavior. Employees that fall [sic] to maintain high standards of conduct and ethics, will be subject to corrective or disciplinary action, and may include recommendation for termination.

A. Compliance with Laws and Regulations

4. Employees will comply with lawful departmental rules, written procedures, directives, bulletins, and verbal orders issued by the proper authorities.

D. Professional Conduct

2. Detainees will not be subjected to sexual, emotional, verbal or physical abuse or the use of unnecessary levels of force.
4. Employees will not commit acts that jeopardize security of the facility or the health, safety and welfare of detainees, staff and visitors.

General Order 24.9.1.0 - Reporting Incidents, in its entirety, including but not limited to, the following subparts:

II. POLICY

It is the policy of the CCDOC to have written procedures for reporting and documenting incidents involving staff, inmates, and visitors, as well as to ensure that incidents or problems with the facility, i.e., sanitation, plumbing, electrical, ventilation, or any other situation that creates a dangerous workplace, are reported and documented in a timely and professional manner.

Employees shall immediately report to their supervisor any information indicating a violation or attempted violation of criminal laws, or a threat to the safety and security of the facility, its property or any person.

Reports shall be made verbally and in writing as directed by this order.

VII. PROCEDURES

A. Notification

1. All reportable incidents occurring within CCDOC involving staff, inmates, or visitors are required to be verbally reported and documented on an Incident Report by staff via the chain of command.
2. Response to resistance/use of force incidents by staff shall be reported in accordance with the current Cook County Sheriff's Office (CCSO) Response to Resistance/Use of Force Policy.

C. Any employee failing to file a report or filing a false report shall be subject to disciplinary action up to and including termination of employment and/or the filing of criminal charges.

F. General Reporting Guidelines

2. Complete and accurate documentation of events and incidents within CCDOC facilities and other sites are essential. Written reports and reports in IMACS serve to keep staff informed of developments and problem areas within the facility. Reports are also instrumental in the planning and implementation of Sheriff's Office policies and procedures.

VIII. APPLICABILITY

This General Order is applicable to all employees of the Cook County Department of Corrections. All employees shall familiarize themselves with the contents of this order. All supervisors will review the contents of this order with all employees under their supervision as appropriate, and ensure the provisions as outlined are strictly adhered to. This order is for strict compliance.

Sheriffs Order 11.2.20.0 - Rules of Conduct, in its entirety, including but not limited to, the following subparts:

II. POLICY

The CCSO serves the citizens of Cook County by performing law enforcement functions in a professional manner, and it is to these citizens that the CCSO is ultimately responsible. Employees of the CCSO shall conduct themselves in a professional and ethical manner both on and off duty. Employees shall not engage in activities that reflect unfavorably on the CCSO but shall instead serve to further the mission of service.

D. Prohibited associations, establishments, and activities.

25. Fail to cooperate or fail to be truthful with external and/or internal agencies in an investigation of a criminal or civil matter.

H. Reporting violations.

4. Employees are prohibited from making a false report, written or oral.

Furthermore, the Respondent's actions violated the Rules and Regulations of the Cook County Sheriff's Merit Board, specifically:

Cook County Sheriff's Department Merit Board Rules and Regulations, in its entirety, including but not limited to, the following subparts:

Article X, Paragraph B:

No Police Officer of the Cook County Sheriff's Police Department, Correctional Officer of the Cook County Department of Corrections, or any Deputy Sheriff of the Cook County Sheriff's Court Services Department shall:

1. violate any Law or Statute of any State or of the United States of America.
2. violate any Ordinance of any County or Municipal Government.
3. violate any of the general orders, special orders, directives or rules and regulations of the Cook County Sheriff's Department.

Findings of Fact

This matter was called for trial on February 4, 2016, after the case was continued on several occasions based upon the needs of the Petitioner (Sheriff) and/or the Respondent's request through counsel, and the completion of all discovery matters. At the trial, with a court reporter being present, all witnesses were sworn under oath. The Respondent did testify. During the trial documents were introduced by the Sheriff and the Respondent that were received into evidence. Additionally, there were certain documents that were admitted as exhibits through agreed upon stipulations by both parties. The Sheriff and Respondent made closing arguments addressing issues in the trial.

Through stipulation between the parties, the Sheriff introduced the following exhibits: Exhibit 1 was General Order 11.2.1.0; Exhibit 2 was General Order 4.1; Exhibit 3 was General Order 3.8; Exhibit 4 was General Order 24.9.1.0; Exhibit 5 was General Order 11.2.20.0; Exhibit 6 was, collectively, the Notification of the Allegation, the waiver of counsel form of the Respondent, a letter from OPR Investigator [REDACTED] to the Respondent, the Response to Resistance/Use of Force form by the Respondent and its continuation, the Incident Report by the Respondent, the Inmate Disciplinary Report prepared by the Respondent, and the Respondent's OPR statement; and Exhibit 7 was, collectively, a DVD containing eight separate video segments of the incident of May 4, 2012.

Additionally, through further stipulation of the parties, the Respondent introduced the following exhibits: Respondent's Exhibit 1 (R-Exhibit 1) was the Collective Bargaining Agreement (CBA) between the Sheriff and Teamsters Local 700; R-Exhibit 2 was a packet of documents from the Respondent's recovery of contraband during his tour of duty identified by his counsel as being mitigating documents; R-Exhibit 3 was Sheriff's Order 11.2.2.0, response to Resistance/Use of Force Duties, Notifications and Reporting Procedures; R-Exhibit 4 was General Order 9.21 Security and Control, Responsibilities of Supervisors; R-Exhibit 5 was a packet of documents pertaining to Officer [REDACTED] (CO [REDACTED] Response to Resistance and

Use of Force Form and CO [REDACTED] OPR Statement; R-Exhibit 6 was the witness statement of Sgt [REDACTED] (Sgt [REDACTED] and Sgt [REDACTED] OPR statement; R-Exhibit 7 was the Response to Resistance/Use of Force Report by the Respondent and a summary interview memorandum by OPR of the Respondent dated January 31, 2014; R-Exhibit 8 was the Response to Resistance/Use of Force from CO [REDACTED] and R-Exhibit 9 was the Data Collection Report from Lt [REDACTED], with subsequent approvals.

Finally, the Sheriff and the Respondent stipulated for the record that the Respondent had no disciplinary history.

After a brief opening statement, the first witness called by the Sheriff was [REDACTED], Investigator, OPR, who testified that he was the investigator assigned to investigate the matter involving the Respondent. He testified that he had been with OPR since 2014 and was a Correctional Officer with CCDOC from 2005 to 2010 prior to his assignment with OPR. He testified that he received training in the use of force from the training academy and through yearly in-service training when he was a correctional officer. He said that he been involved in hundreds of use of force cases since coming to OPR. He said that he had reviewed the CCSD General Order on Resistance/Use of Force hundreds of times. He testified that he was assigned the investigation of the Respondent. Investigator [REDACTED] identified several documents that made up the complaint register from detainee [REDACTED] which was ultimately sent to OPR (Exhibit 8).

Investigator [REDACTED] was shown the video of the incident of May 4, 2012 (Exhibit 7), in which he identified the Respondent, detainee [REDACTED] and other CCDOC employees. Investigator [REDACTED] said in reviewing the video recording (Exhibit 7) of the incident he observed the Respondent and other CCDOC employees used excessive force against inmate [REDACTED]. He said the Respondent struck detainee [REDACTED] who had his arms at his sides, in the head or face. Investigator [REDACTED] said detainee [REDACTED] did not raise his hands toward the Respondent. He testified that the Respondent stated in his Use of Force Report (Exhibit 6) that detainee [REDACTED] took a combative stance and raised his hands toward the Respondent which was not correct nor shown on the video.

Investigator [REDACTED] interviewed the Respondent at OPR on March 24, 2014 (Exhibit 6) after sending him a letter to appear at OPR for the interview (Exhibit 8). The Respondent told Investigator [REDACTED] during the interview, that detainee [REDACTED] disobeyed his directions to keep his hands down, uttered an obscenity at him, continued to yell and turned to face him, at which time the Respondent told Investigator [REDACTED] that he felt threatened by detainee [REDACTED].

Investigator [REDACTED] testified to his knowledge and application of the Integrated Use of Force Model chart that is appended to Sheriff's General Order 11.2.1.0 (Exhibit 1). He said that he had reviewed the chart hundreds of times, was familiar with its application, and said that it was only slightly changed from the time he himself was a correctional officer for the CCDOC. As an investigator for OPR he was very knowledgeable of its content and application.

Regarding the incident of May 4, 2012, Investigator [REDACTED] testified:

"...Well, comparing it (the chart in Exhibit 1) to the video, I did not see detainee [REDACTED] raising his hands, making it unreasonable for Officer [REDACTED] (the Respondent) to be in fear of a battery at that moment. Factoring in even verbal commands given by Officer [REDACTED] and detainee [REDACTED] presumably not listening, that would make him at worst a non-moving resistor."

Investigator [REDACTED] further testified that even when the Respondent made contact (delivered a blow) to detainee [REDACTED] detainee [REDACTED] never became more than a non-moving resistor based on the evidence. The Respondent should have only used a control hold on detainee [REDACTED]. Investigator [REDACTED] noted that there were, according to the video (Exhibit 7), at least four officers around the detainee when the blow was delivered by the Respondent. He "concluded that they (the Respondent's actions) were unreasonable because at that level of resistance (by detainee [REDACTED]) no strikes to the face would be warranted." Investigator [REDACTED] said that the Respondent's actions escalated the situation by his improper use of force as opposed to defusing the situation - as once the blows were delivered by the Respondent a fight broke out between several correctional officers and detainee [REDACTED].

Investigator [REDACTED] said after the incident detainee [REDACTED] was handcuffed and escorted to a cell. During the escort by the Respondent the video showed that the detainee was pushed into a wall and into a doorway by the Respondent (Exhibit 7). These actions were not mentioned in the Respondent's incident report nor his inmate disciplinary report (Exhibit 6). The Respondent was questioned at OPR by Investigator [REDACTED] regarding his pushing detainee [REDACTED] into the wall and doorway and the Respondent said in his signed statement:

"...CO [REDACTED] stated that as he escorted detainee [REDACTED] through the doorways, detainee [REDACTED] was struggling and pulling away. CO [REDACTED] stated that he did not push detainee [REDACTED] into the doorway and did not push him into the wall..."

Investigator [REDACTED] testified that the Respondent's statement was not consistent with what was shown on the video. He also said the Respondent did not accurately reflect this incident in his report. Specifically, in his use of force report and his incident report (Exhibit 6) by not accurately reflecting detainee [REDACTED] actions and not accurately reflecting his own actions.

On cross-examination Investigator [REDACTED] was asked about his background regarding his knowledge of use of force and training he received. He could not remember all of his instructors but did recall receiving training from an individual named [REDACTED]. He described the process as to how this matter was assigned to him 2012. Investigator [REDACTED] was shown and acknowledged that the initial complaint register involving detainee [REDACTED] (Exhibit 8) mentioned Officer [REDACTED] and not the Respondent as the primary officer who used excessive force against him. Investigator [REDACTED] could not remember but believed the complaint register was in the OPR file when he received it. He said the first time that he interviewed the Respondent on this matter it was as a witness and not the accused (R-Exhibit 10). This interview was written up as an interview summary and was not signed by the Respondent or shown to him at the time. The Respondent later became an accused party. Investigator [REDACTED] did not believe that he had access to the video of the incident (Exhibit 7) at the time this interview was conducted on January 31, 2014. He interviewed the Respondent again on March 24, 2014, as an accused, provided him with the applicable warnings, and addressed some of the inconsistencies in his previous interview, his reports and the video tape. This interview was prepared as a statement and signed by the Respondent (Exhibit 6).

He said that he also interviewed Officer [REDACTED] (R-Exhibit 7) in this case about his use of force report ([REDACTED]). Officer [REDACTED] checked off blocks on his use of force report indicating that detainee [REDACTED] was a non-moving resistor, a moving resistor and a low-level assailant. Officer [REDACTED] stated in his use of force report (R-Exhibit 7) that inmate [REDACTED] was yelling and arguing with the Respondent and refused orders. He also indicated that Sgt [REDACTED] was notified.

Investigator [REDACTED] testified that he interviewed Officer [REDACTED] (R-Exhibit 5). Officer [REDACTED] indicated in his use of force report, dated May 4, 2012, that detainee [REDACTED] was a moving resistor, a non-moving resistor and all three levels of an assailant. On February 6, 2014, Officer [REDACTED] was interviewed by Investigator [REDACTED] and said that he had no memory of the incident involving detainee [REDACTED] but he stood by his use of force report.

Investigator [REDACTED] interviewed Sgt [REDACTED] (Exhibit 6). [REDACTED] said in his report that he saw inmate [REDACTED] take a combative stance with the Respondent, raised his hands toward the Respondent, and the Respondent administered an open hand strike. When he interviewed Sgt [REDACTED] in March 2014, Sgt [REDACTED] said that he was familiar with the incident but his memory was vague regarding the incident because of the passage of time.

Investigator [REDACTED] testified that there were several other officers who participated in the incident that he did not interview as they were no longer with the CCDOC. He was shown a use of force form completed by Officer [REDACTED] CCDOC (R-Exhibit 8) regarding the incident. He said Officer [REDACTED] identified detainee [REDACTED] as a non-moving resistor, a moving resistor and a low-level assailant in the report. In the report Officer [REDACTED] witnessed detainee [REDACTED] yell an obscenity at the Respondent and tell the Respondent that "I don't have to listen to you." Officer [REDACTED] further witnessed detainee [REDACTED] noncompliance with a verbal order from the Respondent, his taking of a combative stance and his failure to place his hands behind his back. Investigator [REDACTED] said that he did not interview Officer [REDACTED].

Investigator [REDACTED] was shown a report submitted by Lt [REDACTED] (R-Exhibit 9) that stated the inmate took a fighting stance and the Respondent issued an open hand strike to the inmate [REDACTED]. Lt [REDACTED] checked the block on the form that "All officers acted in accordance with Department policy." The form showed (R-Exhibit 9) showed the report went through two additional reviews above Lt [REDACTED].

Investigator [REDACTED] said he interviewed detainee [REDACTED] over the phone while the detainee was at the Illinois Department of Corrections. In his interview detainee [REDACTED] did not mention the Respondent by name (R-Exhibit 11).

Investigator [REDACTED] was shown the videos of the incident with detainee [REDACTED], the Respondent and other officers and was questioned as to his observations on the videos (Exhibit 7) and his interpretation of the CCDOC policies and procedures regarding the application of force. He said the officers do not have immediate access to the videos when preparing their reports.

On redirect examination Investigator [REDACTED] said that he did not agree with the statements some of the officers made in their reports as it was not supported by the videos. He said that he did not use the first interview by the Respondent (R-Exhibit 10) as they are prohibited from using interviews for making a policy violation determination in which an individual was interviewed as a witness and not the accused. He said the fact that command channels certified reports did not make the reports true.

He was directed to the formal definition of a low-level assailant (Exhibit 1) in which it stated, "This type of assailant is one who places an officer in fear of a battery and includes advancing on the officer in a threatening manner or closing the distance between the assailant and the officer..." Investigator [REDACTED] was asked who closed the distance between the assailant

and the officer, he replied "Officer Mireles (the Respondent) was the one who approached detainee [REDACTED]

On re-cross examination Investigator [REDACTED] it was pointed out by the Respondent's counsel that he testified that he did not agree with the reports of Officer [REDACTED] Officer [REDACTED] Officer [REDACTED], nor Sgt [REDACTED] but they were all present and he was not during the event. Investigator [REDACTED] testified that was correct.

[REDACTED] (Expert [REDACTED] expert witness, was called by the Sheriff and testified via Skype (video conferencing). Expert [REDACTED] said that he was employed with the University of Tennessee, County Technical Assistance Service, as a jail management consultant. He has held that position for approximately eight years. He testified to his background that reflected he has been involved in corrections for over 35 years and that he had been employed as an expert on this matter by the Sheriff (petitioner). After objection by the Respondent, he was permitted to testify as an expert and his CV was entered into evidence (Exhibit 10).

Expert [REDACTED] testified that he had been provided, before the hearing, with the Sheriffs Orders, statements, reports, supervisory reviews and the videos and had reviewed them all. Based on his review he concluded that the Respondent used excessive force on May 4, 2012. He said the Respondent struck the inmate (detainee [REDACTED] although, the inmate was not posing any potential threat at that point in time. The Respondent took eight or nine steps from the restroom area to position himself face to face with the inmate. He opined that by the Respondent closing the distance to the detainee while words were being exchanged caused the escalation of the situation.

He testified there were other officers around the detainee to include one who removed a piece of paper or cardboard from the detainee's hand. The only movement by the detainee was when he was turned around by one of the officers to face the Respondent. The Respondent then struck the detainee in the side of the face with his right hand while the detainee kept his hands down to his side.

Expert [REDACTED] testified that the detainee was a high-level cooperative subject when he was struck by the Respondent. The proper technique to have been used would have been the use of verbal direction. Expert [REDACTED] said that the detainee was not a moving resistor because he was complying with the movements of the corrections officers. He testified the detainee was not a moving resistor because he was standing there and not moving away from the correctional officers. Expert [REDACTED] explained, that in his opinion, the detainee did not fall into any of the assailant categories as he was standing where he been placed and was not initiating any aggressive actions against the correctional officers.

Expert [REDACTED] opined that the Respondent had violated Sheriffs General Order 4.1, Internal investigations (Exhibit 2); specifically, the section, number 18, regarding "Making a false official report, either oral or written." He testified that the Respondent did not include certain information in his report (Exhibit 6):

"...His report does not indicate that he closed that distance. It sort of indicates or alludes to – indicates that this was all sort of one sequence of events that happened, just sort of (inaudible) in one spot, when, in fact, there was a distance, that Officer Mireles (the Respondent) closed the distance.

He also did not point out in his report of the rationale for placing his hands in the – detainee's face, whether it's his hand or his finger in the detainees face while face-to-face. Then ultimately finding that a strike had occurred..."

Expert █ said that, as it relates to report writing, he did not see the detainee take a combative stance. The detainee turned around and at the same time he was turned around to face the Respondent, the Respondent was in his face. He did not see on the video that the detainee raised his arms. He said he could see the detainee's left arm and it did not appear to move, he could not see the detainee's right arm.

On cross examination, Expert █ said that he had never worked for the CCDOC, other than as part of a team that conducted an audit of the CCDOC, approximately fifteen years previously. He said that he had never worked as an officer or supervisor for the CCDOC. He was asked about his background and stated that he had been involved in one use of force situation as an officer and two as a supervisor when he was employed with the Hamilton County Sheriff, TN. Expert █ said that his correctional experience with the U.S. Marine Corps (USMC) was similar to that with county law enforcement except that he traded his green uniform for a blue one, the processes were the same. They were all governed by the recognized standards of the American Correctional Association. He said that he was involved in the reviewing and inputting information into the "Resource Guide for Jail Administrators," specifically on "Jail Security, Safety and Emergency Preparedness" (R-Exhibit 12).

Expert █ testified that the use of force used by an officer is based on the totality of circumstances as judged from the officer's perspective. Taking into account the level of the threat, the number of officers at the scene, the size of the inmate and the location of the incident. Location came into play in this specific incident as it seemed to be a "low-risk setting unlocked" as the detainees were free to move about on their own via a "hall-pass." He testified that he would be surprised to know that the classification of inmate offenses would be from minor offenses to egregious violent crimes that are mixed in the holding cells.

Expert █ testified that he believed the detainee was high-level cooperative in that he followed the directions he was given by the correctional officers when they had their hands on him and he was not resistant to their direction. He had no knowledge of what verbal directions were given other than what the Respondent wrote in his report. He did not know if the detainee was ordered to turn around so he could be "cuffed up" or if the detainee had just had a confrontation with another inmate prior to the incident. Expert █ maintained the proper steps to be taken by the Respondent were to deescalate the situation and to not get in the detainees face if the detainee was in a highly agitated state.

On re-direct Expert █ testified that he had no information that the detainee "balled his fists" at the Respondent.

On re-cross Expert █ said that the manipulation of the detainee's limbs would have been a possible alternative to the use of force against a moving resistor but was not one that was employed.

The trial was adjourned for the day, to be continued on February 5, 2016.

The trial continued on February 5, 2016, with Sgt █ (Sgt █). Sgt █ testified that he had been with the CCDOC for 20 years total. He had spent 16 to 17 years in RCDC as either a CO or Sgt. He started with the CCDOC in 1996 and was promoted

to Sgt in 2006. He testified that he understood that Sheriff's General Order 9.21 (R-Exhibit 3) was geared to the responsibilities of sergeants.

Sgt [REDACTED] testified that he was on duty on May 4, 2012, and that about a year ago he was re-familiarized with the incident that occurred between the Respondent and detainee when he was interviewed by OPR. He said that he completed reports the day the incident occurred (R-Exhibit 6). He has seen the video of the incident (Exhibit 7) one time since the incident occurred and that was at OPR. He said that he had no independent recollection of the incident that occurred on May 4, 2012.

Sgt [REDACTED] was shown his Data Collection Report and his signed statement to OPR regarding the incident (R-Exhibit 6). He was asked to review the documents by the Petitioner who requested permission from the Board, through the hearing officer, to treat Sgt [REDACTED] as a hostile witness, which was granted.

Sgt [REDACTED] testified that he occupied a desk in the center of an area called the "pit." On the date of the event he was sitting in the pit and would not have been able to see where Bullpen A was while seated, if he stood up he could see from "shoulder high that was about it." He was shown the video of the incident (Exhibit 7) and identified the "one white shirt" as being himself. He could not tell when he walked into sight of the video if he had been seated or standing beforehand. He testified that he wrote down that detainee [REDACTED] was in a combative stance with the Respondent. Sgt [REDACTED] said he did not describe what he meant by a combative stance in his report. He was asked if he told OPR what he meant by a combative stance and he responded that he was not asked.

He testified that if he was standing his line of sight was about shoulder high and was asked to explain what about the detainee was combative from shoulder high. He said that he explained in his report and stated to OPR that the inmate was yelling and had turned on the officer – as he could see in the video. He testified that without the video he could not remember the incident as freshly as with the video. He was asked about his writing in his incident report (R-Exhibit 6) in which he stated, "Inmate [REDACTED] started to raise his hands at Officer Mireles" (the Respondent) at that his line of sight was shoulder high. Sgt [REDACTED] said detainee [REDACTED] did not raise his hands above his shoulder but he could not remember if he (Sgt [REDACTED]) was standing. Sgt [REDACTED] agreed that if he were concentrating on paperwork he would not have seen what was happening. He did recall that after the open-hand strike or the strike to the detainee, he came running out.

Sgt [REDACTED] said that he went along with the other officers who were removing the detainee from the scene after he had been handcuffed. Sgt [REDACTED] said that he was with the Respondent while they moved detainee [REDACTED] to another area but he did not see the Respondent pushing the detainee into the wall. He was shown the video (Exhibit 7) and did not see it on the video either, he agreed that there were two "pauses" in walking the detainee to the holding cell. He could not recall if all the officers prepared their paperwork in the same area together after the incident. He did recall that after the detainee was gone that he gathered everyone together and started their paperwork. He does not remember if the officers and/or himself were in the same room together preparing their paperwork.

On cross examination Sgt [REDACTED] testified that he had only seen the video of the incident one time before the trial which was at OPR. He said that he did not have access to the videos. He testified that his witness statement (R-Exhibit 6) would have been prepared at the time of the incident and he would have remembered where he was standing or sitting. He said

that he prepared his statement from his own perspective and he did not falsify his report. He said that at the time he wrote his report he saw the detainee take a combative stance as that was what he saw. He did not remember it at OPR which was why he said it would be difficult to respond to OPR's question. He further testified that he wrote in his report that the detainee raised his hands to the Respondent as that was what he saw at the time.

On redirect examination Sgt [REDACTED] testified that from his view of the video he did not believe the Respondent pushed detainee [REDACTED] into the wall. He could not recall if he asked the Respondent on the day of the incident if he pushed the detainee into the wall. Sgt [REDACTED] said that pushing a detainee into a wall would be a use of force.

On re-cross examination Sgt [REDACTED] testified that stabilizing a detainee would not be a use of force.

The Sheriff rested its case and the Respondent made a brief opening statement.

[REDACTED] Police Officer, Chicago Police Department (CPD), was called as an expert witness by the Respondent (Expert [REDACTED]). He testified that he had been with CPD for 16 years and was currently assigned to the Education and Training Division for the last ten years as a use of force and control instructor. Additionally, he is the owner of a company, Blueline Training Corps (BTC), in which he teaches law enforcement certifications. He further works for Armament Systems and Procedures (ASP), in which he instructs on use of force, handcuffing and baton control.

Expert [REDACTED] testified that the CPD uses the Desmedt use of force model which is the same one as used by the CCSD. He said that he is currently certified and was certified in the model by attending an initial 80-hour course and subsequent recertifications. Prior to working at CPD he was employed by the CCDOC. He was a CO from 1994 to 1999. Expert [REDACTED] detailed his curriculum vitae, resume (R-Exhibit 13) and a use of force model he created, entitled the Blueline Training Force Grid (R-Exhibit 14), which were both entered into evidence.

Expert [REDACTED] testified that he reviewed the reports regarding the Respondents use of force and the videos of the incident with detainee [REDACTED] and in his opinion the Respondents use of force was reasonable. He opined that the Respondent's open-handed strike at detainee [REDACTED] was reasonable,

“...due to the subject’s actions as being aggressively offensive without weapons, using an open hand stun, which is low pressure impact on the model – also known when we’ve taught it, it’s called diffused pressure striking – with using an open hand stun instead of direct mechanical body mechanics against an assailant, which is punches, elbows, knees, kicks, causing more tissue damage and a different intent, Officer Mireles used an open hand stun, low impact pressure strike when he could have gone up in a higher force option due to the subject’s actions. So he was actually – even though the control mode worked, he was actually in a probable and effective control area on the model.”

Expert [REDACTED] categorized detainee [REDACTED] as aggressively offensive which would be a low level assailant as described in the Sheriff's use of force model (Exhibit 1). He drew this opinion from the language used by the detainee, according to the Respondent's use of force report, in which he said “fuck you, I don’t have to listen to you,” body cues, and getting into a stance, that “puts him at a subject that’s aggressively offensive without weapons.” Expert [REDACTED] said that he had reviewed the Respondent's report in which he stated the detainee's

hands started to come up, but he was unable to determine this from his viewing of the video (Exhibit 7). Expert [REDACTED] testified that, "just because the video didn't show it doesn't mean that it didn't happen, and it's from the officer's perspective that we're going on that he saw something that caused him to react."

Expert [REDACTED] said he reviewed the other officer's reports of the incident and they supported the Respondent's statement that the detainee's hands started to come up. They also categorized the detainee as a low level assailant. Expert [REDACTED] opined that the Respondent could have gone to a higher method of control and that was a mechanical strike.

Expert [REDACTED] testified in viewing the video after the incident of the detainee being escorted through the doorway by the Respondent and another CO it looked like three grown men going through a doorway at the same time. He said although contact was made he did not see any intentional pushing of the detainee by the officers; therefore, in his opinion no excessive force was used. He did opine that the detainee was resistive based on the manner in which the officers were aggressively going through the door with the detainee.

On cross examination Expert [REDACTED] testified that he had testified in three previous occasions as an expert, each time on behalf of the officers. He has never testified on behalf of a correctional institution. He said each of his prior testimonies were in merit hearings, one was here and one was in East Chicago, IN, and the third was the current hearing (he corrected his earlier statement from testifying in three previous hearings to two). He has not testified as an expert in any forum regarding CPD officers being brought before a board for use of force conduct.

He testified that the use of force can exist with someone who is a cooperative subject and the use of force can be administered when doing an escort of a detainee. He acknowledged that he had not interviewed the Respondent and the information that he had based his opinion on was what had been provided to him by the Respondent's counsel. He testified that his understanding of case law was that use of force was a seizure and therefore must be reasonable. He testified that he conducted lock-up training twice a year for CPD. He was asked to review the Respondent's use of force and to show where the Respondent reported that detainee [REDACTED] "blades his stance" as he testified to on direct examination. Expert [REDACTED] said the Respondent wrote that the detainee took a combative stance which was what he referred to as a bladed stance. After reviewing the video again, Expert [REDACTED] said the turning of detainee [REDACTED] was what he was categorizing as blading. He concurred that the turning of a detainee by an officer placing his hand on the detainee as depicted in the video was cooperating with the officer. Expert [REDACTED] was asked about his testimony on direct examination in which he stated the detainee's shoulders were raised. He agreed that was his testimony and said "I would have to say that it is written that his "hands have started to come up."

On redirect examination Expert [REDACTED] testified that when he testified on cross examination that the detainee was cooperating with the officer when he turned was that the detainee was following verbal commands given by the officer. He did not believe that was the case with detainee [REDACTED] as he assumed a stance which characterized him as a different person. This was the blading of his stance that he referred to.

The Respondent was called and testified that he had been with the CCDOC for seven and a half years. He said he had no prior discipline that he could recall. He was shown a report dated January 18, 2011, which he said reported contraband that he had recovered from a

detainee (R-Exhibit 2). He was shown a photo of receiving (R-Exhibit 15) that he testified depicted the location of various bullpens that were not routinely locked. The photo was produced off of the video from the day of the incident. The Respondent testified the video showed there were more than ten detainees in the bullpens at the time the photo was taken.

The Respondent said that he was aware of the Sheriff's order on response to resistance and use of force (Exhibit 1). He said that he was trained in the application of force in accordance with the model that was part of the order. He testified that he was taught to use open hand strikes when either he was in danger or one of his officers were in danger of getting struck. He said he was taught different versions of how to make the determination of when he was about to get struck. He testified,

"The trainer said if an inmate balls his fists, moves, raises his hands, slightly moves his hand, if we're in fear of getting hit, if we're – well, if it's imminent, then you take action."

He identified his use of force report (Exhibit 6) and said it was the document he submitted after the use of force with detainee [REDACTED]. He said that he checked the block that detainee [REDACTED] was a non-moving resistor and not responsive to verbal direction as "we were giving him orders to handcuff." He testified that he checked the block under criticality of environment as high risk because receiving is high risk based on the number of inmates. He checked the block on timeliness as being high risk as when the detainee was ordered to handcuff, "he didn't reply – he didn't respond." Under moving resistor, he checked slightly evasive movement of arm. He said that he issued an open hand strike after the detainee made a slightly evasive movement of the arm.

He testified that he was trying to get detainee [REDACTED] to cooperate and turn the opposite direction then he actually turned so he could be handcuffed and isolated from the rest of the detainees. He said detainee [REDACTED] was non-compliant with his direction, moved his hands up and he was in fear of his safety which was why he used a hand strike - as he wrote in his narrative. He said the open hand strike and the emergency takedown was the only force he used on detainee [REDACTED]. He testified that after the incident he did not intentionally hit detainee [REDACTED] against the doorway, nor did he hit detainee [REDACTED] against a wall. He said the detainee was not cooperating as they were escorting the detainee but they did not use any force against him other than moving him away from the scene.

On cross examination the Respondent testified that he had been taught about the use of force in the training academy. He had also been taught about report writing. He testified that he regularly attended in-service training but for a time he missed a few. He was aware of the General Order regarding the use of force.

The Respondent said he became engaged with detainee [REDACTED] after he was called to a disagreement between detainee [REDACTED] and someone else. He said he documented this in his report by stating that he heard yelling from the inmate bathroom. He said that he did not write his report in chronological order as things occurred. He testified that he wrote in his report that he heard yelling while he was investigating an incident in the bathroom. He directed an order at the detainees, to include detainee [REDACTED] to go to Bullpen 5. He testified this was when detainee [REDACTED] said "fuck you, I don't want to walk to Bullpen 5." The Respondent said there were two officers engaging detainee [REDACTED] but he knew they had less than a year on the job as correctional officers so he walked over to detainee [REDACTED] and the two officers so he could establish a commanding presence. He said that he was within a foot of detainee [REDACTED]

The Respondent testified that he closed the distance between the detainee and himself as part of his use of force training and he was trying to defuse the situation. He admitted that he was waiving his finger in the face of the detainee and said this was not part of what he was taught in establishing a commanding presence. The Respondent testified that he had written in his report, "Inmate [REDACTED] was uncooperative and took a combative stance." He acknowledged that one of the officers to the side of detainee [REDACTED] put his hand on the detainee and the detainee turned toward the Respondent. The Respondent testified, "He turns not the way that you – he was supposed to turn. He was supposed to turn around to handcuff. He turns forward." He testified that the officer who put his hand on the detainee was not trying to handcuff the detainee; although, he agreed that the grabbing of an arm or finger is a step in the process of handcuffing.

The Respondent testified that after the inmate took a combative stance his hands started to come up. He was shown the video and was asked, "you don't actually see from this video the left hand coming up at all, do you?" The Respondent replied, "if you look right here, you see his elbow coming up, you see the arm." He was asked, "He's pulling his pants up right here, correct?" The Respondent replied, "I don't know." After objection from his counsel the question was rephrased as, "It's not your testimony that when the detainee pulls up his shorts that was the movement that caused you to strike him in the face, are you?" The Respondent testified, "no."

The Respondent testified that he wrote in his use of force report that the detainee raised his hands toward him as that was what he saw. He said his testimony was, "I seen hands coming up, or raising up." The Respondent said during the interview with OPR (Exhibit 6) he was shown the video of the incident with detainee [REDACTED]. The Respondent testified that he did say to OPR, after reviewing the video, that the detainee raised his hand toward him. This was written into his statement to OPR. The Respondent testified that he did write in the inmate disciplinary report and the incident report that the inmates hands started to come up. These two reports were prepared shortly after the incident occurred and on the same date.

The Respondent testified that, after the incident and with detainee [REDACTED] handcuffed, he escorted the detainee with another officer. He was asked if through his use of force training if he were involved in the use of force against a detainee was he supposed to be the one escorting. The Respondent said, "If I was commanded to, yes." He was asked, "you weren't commanded to in this scenario, were you?" The Respondent replied, "If I was the one that put the handcuffs, yes." This exchange predicated the Respondent stating he could not remember if he were directed to do so.

The Respondent testified that when he was escorting the detainee he had his left hand on the detainee's shirt above his left shoulder and his right hand on the detainee's left wrist area. The detainee was handcuffed with his hands behind him. The Respondent was on the detainee's left side with another officer on the detainee's right side. He was shown the video of the escort and told he would be asked about two pauses. After viewing the video, the Respondent was asked if his left hand pushed forward. The Respondent testified his hand moved and there was a pause as they were escorting the detainee through a doorway. The Respondent continued walking with the detainee and made a right but denied he walked the detainee into a wall. He testified there was no documenting of use of force on the walk as no use of force was used.

On redirect, the Respondent testified that he prepared his reports of the incident without the use of the video. It was prepared based on his recollection of the events at the time it occurred. He said it was his perception that the detainee took a combative stance and that his hands came up. He said he struck the detainee as he was in fear of his safety. He said it was close to two years from the date of the incident until the time he was interviewed by OPR. He said that when he testified that his hand moved when escorting the detainee, it was in order to readjust his position and not to push the detainee.

The Respondent rested and both parties delivered their closings.

Decision

The Board finds by a preponderance of the evidence through the testimony of the witnesses; the video tape recording of the May 4, 2012, incident (Exhibit 7); and the supporting evidence that the Respondent and others used excessive force, were less than credible in their testimony and inaccurate in their written reporting of the event (Exhibit 6, R-Exhibits 5-9). The video, which is a collection of videos of the incident from different angles, shows that inmate [REDACTED] was hit in the head by the Respondent at least one time, taken to the ground and then punched and kicked by other officers. The detainee, who at most was a non-moving resistor that became a moving resistor once the initial blow was delivered by the Respondent, did not fit the category of becoming an assailant. The detainee may have been shouting obscenities at the Respondent or other correctional officers, but he was already in the control of two correctional officers who were by his side, when the Respondent aggressively closed the distance with the detainee and waived or pointed his finger in the face of the detainee. One of the correctional officers beside the detainee removed a cardboard paper pass from the detainee's hand and began to turn the detainee toward the Respondent when the Respondent delivered his blow to the head of the detainee. There is a lack of evidence that the detainee became an assailant by making an aggressive move against the Respondent, balling his fists, raising his arms or otherwise taking a combative position against the Respondent. The Respondent contends the detainee became an assailant through the testimony of the Respondent, the Respondent's use of force expert (contested by the Petitioner's expert) and the written use of force reports by the Respondent and the other officers – which are inconsistent with the video. Furthermore, it is reasonable to believe and consistent with the Sheriff's use of force policy, had the Respondent not engaged the detainee by closing the distance with the detainee to within less than a foot while two other officers were already addressing the detainee, waived his finger in the face of the detainee, and allowed the two officers already with the detainee to handle the matter, it most likely could have been deescalated and no blow from the Respondent would have been used.

The Board recognizes that the safety of the correctional officers is paramount to successfully executing their duties and the mission of the CCDOC and the use of force may be required, authorized, and the appropriate action to take; however, in doing so it is a necessity for the correctional officers to properly follow their orders/procedures, training and to deescalate when necessary and appropriate. Once force is used, it is incumbent on all participants to accurately and fully report the facts of the use of force. The Respondent and others did not fully report the events regarding the use of force applied against detainee [REDACTED]. There is no mention in the Respondent's use of force report, nor in those of the other officers, of the detainee being punched and kicked while on the ground as evident from the video. There is no mention in the Respondent's use of force report that the detainee was brought to his feet after being handcuffed and his face was pushed into a cell wall by the Respondent as the detainee appeared to be agitated and was moving while handcuffed. This was not mentioned in any of

the use of force reports by the Respondent or the other officers. It only becomes addressed when the Respondent was confronted by OPR. After detainee [REDACTED] is brought to his feet, the detainee is then escorted by the Respondent and another officer to receive medical attention. It is alleged that during this movement, the Respondent pushed the detainee into a doorway and then a wall while being moved. It is not clear from the video that the detainee was pushed into the wall or the doorway as the wall and doorway are not in the immediate view of the video, only that pauses occurred during the officer's rapid movement of the detainee; the Respondent's left hand was on the shoulder of the detainee which he used to guide the detainee's forward movement; his right hand was on the wrist of the detainee, which the Respondent had raised to the height of the detainee's mid back, just below his shoulders; and the detainee's head did look to be on a path to strike the doorway and then a wall; none of which were reported in the use of force reports. The question is raised why was the Respondent the one escorting the detainee after the altercation? The video shows numerous officers were present, including Sgt [REDACTED] who followed the Respondent and the other officer in escorting the detainee. The Respondent should have been separated from the detainee, which at the time would have been reasonable and prudent.

Conclusions of Law

Based on the evidence presented and after assessing the credibility of the witnesses and the weight to be given the evidence in the record, the Board finds that Respondent Joel Mireles, Star Number 9240, CCDOC, did violate Sheriffs Order 11.2.1.0, Section II, Section V, E, Section VII, A, B, C and E, Section X A 4, 6 and 7 and Section XIII A, B, C; V, A1; General Order 24.9.1.0, Sections II and VII, A1-2, C and F-2 and Section VIII; General Order 3.8, Sections I and III, A4, D2 and 4; General Order 4-1, Section III, A17-18; Sheriffs Order 11.2.20.0, Section II, D25 and H4; and Article X, Paragraph B, 1-3, of the Rules of the Cook County Sheriff's Merit Board.

Wherefore, based on the foregoing, it is hereby ordered that the Respondent Joel A. Mireles, be and is separated from employment with the Cook County Sheriff's Office effective March 13, 2015.

[REDACTED]
James P. Nally, Chairman

[REDACTED]
Byron Brazier, Vice Chairman

[REDACTED]
Gray Mateo-Harris, Board Member

[REDACTED]
John J. Balicandro, Secretary

Dated:
7/29/16

[REDACTED]
Jennifer E. Bae, Board Member

[REDACTED]
Kim R. Widup, Board Member

[REDACTED]
Patrick Brady, Board Member

[REDACTED]
Vincent T. Winters, Board Member